

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court <u>Northern</u> District of <u>TEXAS</u>	
Name (under which you were convicted): <u>Salomon Boranegria</u>	Docket or Case No.: <u>3-07-CR-190</u>
Place of Confinement: <u>U.S.P. Lev. P.O. Box 1000, Lev., PA 17837</u>	Prisoner No.: <u>#36313.177</u>
UNITED STATES OF AMERICA <span style="float: right;">Movant (include name under which convicted)</span> <div style="text-align: center;">v. <u>Salomon Boranegria</u></div>	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:  
United States District Court for the Northern District of Texas, 341 Pine Street, Rm. 2008, Abilene, TX 79601
  
- (b) Criminal docket or case number (if you know): 3-07-CR-190
  
2. (a) Date of the judgment of conviction (if you know): unknown
- (b) Date of sentencing: 10.16.2007
  
3. Length of sentence: 220 months consecutive 120 months
  
4. Nature of crime (all counts): 18:875 : 2 USE of interstate comm. facilities to demand ransom; Aiding; Abetting / 18:924(a) : 2 Using, Carrying / Brandishing a firearm during or in relation to a crime of violence; Aiding; Abetting and 18:1201(a) Consp. to commit kidnapping, kidnappng; Aiding; Abetting.
  
5. (a) What was your plea? (Check one)
 

(1) Not guilty ☐
(2) Guilty ☒
(3) Nolo contendere (no contest) ☐
  
6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
  
6. If you went to trial, what kind of trial did you have? (Check one)
 

Jury ☐
Judge only ☐
  
7. Did you testify at a pretrial hearing, trial, or post-trial hearing?
 

Yes ☐
No ☒

AO 243 (Rev. 09/17)

8. Did you appeal from the judgment of conviction? Yes ☐ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: \_\_\_\_\_  
 (b) Docket or case number (if you know): N/A  
 (c) Result: \_\_\_\_\_  
 (d) Date of result (if you know): \_\_\_\_\_  
 (e) Citation to the case (if you know): \_\_\_\_\_  
 (f) Grounds raised: \_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): \_\_\_\_\_  
 (2) Result: \_\_\_\_\_  
 (3) Date of result (if you know): N/A  
 (4) Citation to the case (if you know): \_\_\_\_\_  
 (5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: \_\_\_\_\_  
 (2) Docket or case number (if you know): N/A 3-07 CR-190  
 (3) Date of filing (if you know): \_\_\_\_\_

AO 243 (Rev. 09/17)

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: \_\_\_\_\_

Yes ☐

No ☐

(2) Second petition: \_\_\_\_\_

Yes ☐

No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

AO 243 (Rev. 09/17)

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Whether Boranaga's constructive § 924(c) § 2 conviction is invalid as § 16(b) is unconstitutionally vague in Dimaya?

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

§ 924(c) § 2 using, carrying, brandishing a firearm during or in relation to a crime of violence; kidnapping charge and conviction failed to describe the substantial risk of physical force to constitute a crime of violence under 18 U.S.C. § 16(b) force clause. No one suffered physical injury or pain connected to the conspiracy to commit kidnapping under 18 U.S.C. § 1201(c). There was no evidence of physical violence on any person. Therefore, movant was denied real notice of the true nature of the crime charged against him as guaranteed by Due Process and in violation of Sessions v. Dimaya, 138 S.Ct. 1204, 200 L.Ed.2d 549 (April 17, 2018). Thereby rendering his § 1201(c) § 924(c) § 2 constitutionally invalid convictions and his incarceration a fundamental miscarriage of justice to one actually innocent. Bowley v. United States, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998).

see Sentencing Comp., attached Exhibit "A"

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

N/A

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

N/A  
3-072-190

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

AO 243 (Rev. 09/17)

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

**GROUND TWO:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

N/A

AO 243 (Rev. 09/17)

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

AO 243 (Rev. 09/17)

**GROUND THREE:***N/A*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

*N/A***(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

*N/A***(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

*N/A*

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐*N/A*

AO 243 (Rev. 09/17)

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

**GROUND FOUR:**

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

N/A

(2) If you answer to Question (c)(1) is "Yes," state:



AO 243 (Rev. 09/17)

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Yes. Because Dimaya wasn't decided until April 17, 2018. Sixteen years after offense and appeal.

AO 243 (Rev. 09/17)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

John Doe

(b) At the arraignment and plea:

John Doe

(c) At the trial:

N/A

(d) At sentencing:

John Doe

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐ N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐ N/A

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

N/A

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

*Sessions v. Dimaya, 138 S.Ct. 1204 (April 17, 2018).  
This motion is timely filed.*

---

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev. 09/17)

Therefore, movant asks that the Court grant the following relief: vacate convictions and sent-  
ence for §1201(a), §924(a), §2 as invalid, set aside  
as void and nullity, terminate or cancel deportation  
and immediate release from his justice will best be served.  
or any other relief to which movant may be entitled.

Pro Se Litigant

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion  
under 28 U.S.C. § 2255 was placed in the prison mailing system on July 12, 2018  
(month, date, year)

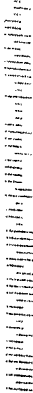
Executed (signed) on July 12, 2018 (date)

Salomon Boanegra  
Signature of Movant # 36313.177

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

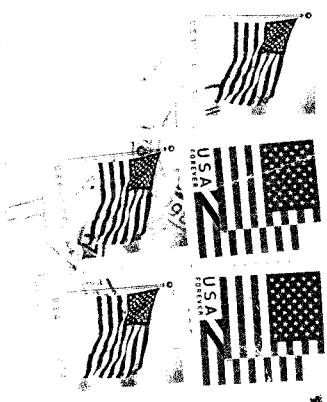
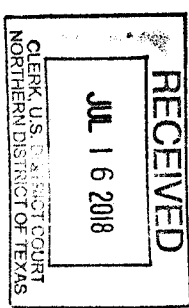
Inmate Name: Salomon Boman  
Register Number: # 36313.177  
United States Penitentiary  
P.O. Box 1000  
Lewisburg, PA 17837

JUL 13 2018



CEGAR  
NFI  
a

United States District Court  
For The Northern District of Texas  
341 Pine Street, Rm. 2008  
Arlene, TX 79601



R  
7/12/18

U.S. PENITENTIARY

P.O. BOX 1000

LEWISBURG, PA 17837

DATE ~~10/13/200~~

"The enclosed letter has been processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address."